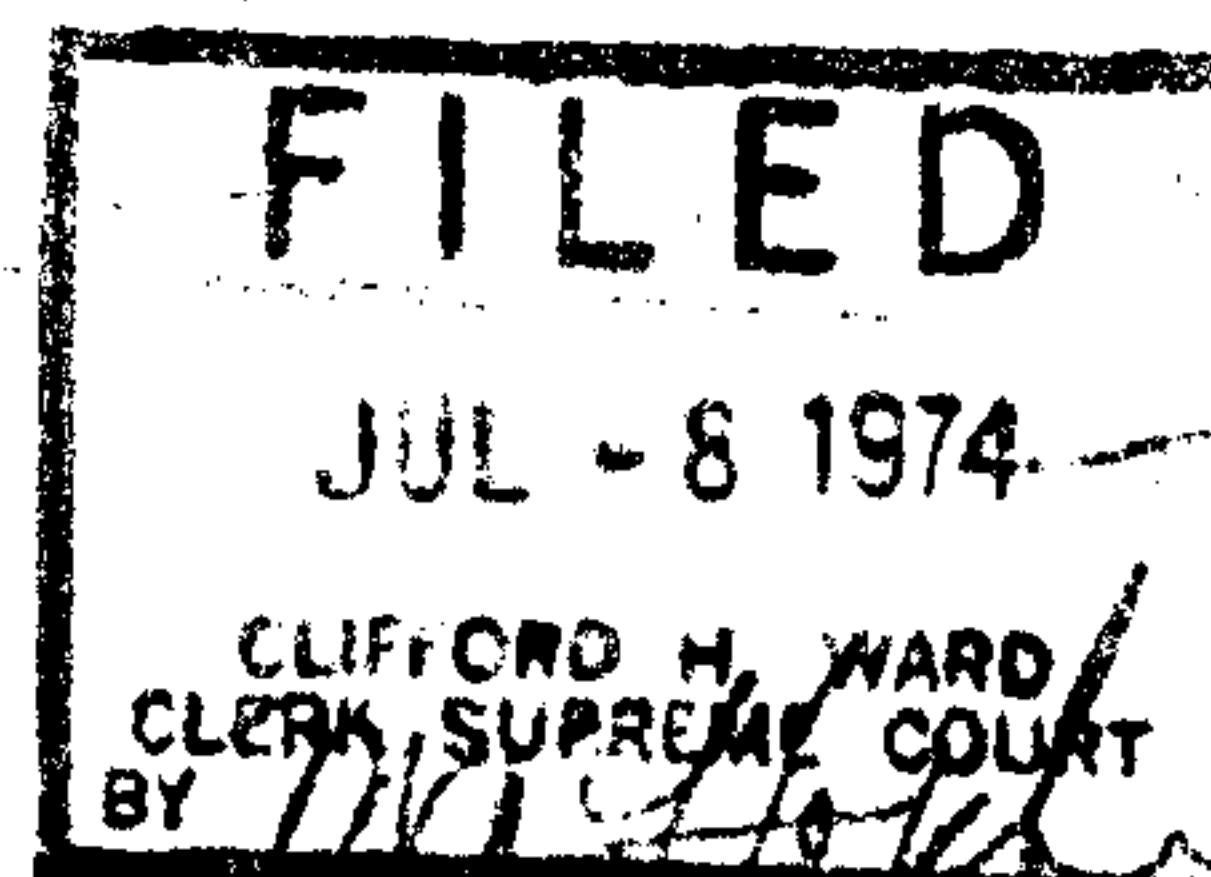


IN THE SUPREME COURT
OF THE STATE OF ARIZONA



FARMERS INVESTMENT COMPANY, a
corporation,

Petitioner,

-vs-

No. 11439

PIMA MINING COMPANY, a corporation;
ANDREW L. BETTWY, State Land Com-
missioner; STATE LAND DEPARTMENT;
THE HONORABLE ROBERT O. ROYLSTON,
Judge of the Pima County Superior
Court; and THE PIMA COUNTY SUPERIOR
COURT,

Respondents.

FILING OF EXHIBIT A

Due to inadvertence Exhibit A referred to in Respondents',
ANDREW L. BETTWY and THE STATE LAND DEPARTMENT, Motion for Re-
hearing filed with this Court on July 5, 1974, was not attached
thereto and is filed at this time.

DATED this 8th day of July, 1974

N. WARNER LEE
The Attorney General

PETER C. GULATTO
Assistant Attorney General
Attorneys for Respondents ANDREW L.
BETTWY and THE STATE LAND DEPARTMENT

Copy of the foregoing mailed this
8th day of July, 1974, to:

Mark Wilmer, Esq.
Musick, Peeler & Garrett
Verity & Smith
The Honorable Robert O. Royston

Peter C. Gulatto

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss:

I Craig Swick hereby certify:
Name


That I am Reference Librarian, Law & Research Library Division of the Arizona State
Title/Division

Library, Archives and Public Records of the State of Arizona;

That there is on file in said Agency the following:

Microfilm of Farmer's Investment Company v. Pima Mining Company et al, Arizona Supreme Court Case No. 11439, Filing of Exhibit A, July 5, 1974.

The reproduction(s) to which this affidavit is attached is/are a true and correct copy of the document(s) on file.


Signature

Subscribed and sworn to before me this

12/12/2005 ✓
Date

Etta Louise Niue
Signature, Notary Public

My commission expires

04/13/2009
Date



Notary Public State of Arizona
Maricopa County
Etta Louise Muir
My Commission Expires
04/13/2009

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

FARMERS INVESTMENT COMPANY, a
corporation,

Plaintiff,

vs.

NO. 116542

THE ANACONDA COMPANY, a corporation;
AMERICAN SMELTING & REFINING COMPANY,
a corporation; DUVAL CORPORATION, a
corporation; PIMA MINING COMPANY, a
corporation; BOYD LAND AND CATTLE
COMPANY, a corporation; DUVAL SIERRITA
CORPORATION, a corporation;

ANSWER AND CROSS-
CLAIM

Defendants & Cross-Defendants,

ANDREW L. BETTWY, as State Land Commissioner,
and THE STATE LAND DEPARTMENT, a department
of the State of Arizona,

Defendants & Cross-Claimants.

The defendants Andrew L. Bettwy as State Land Commissioner,
and the State Land Department, a department of the State of Arizona,
for their answer to the Amended Complaint filed herein, admit,
allege and deny as follows:

COUNT ONE

First Defense

The plaintiff has failed to state a cause of action against
these answering defendants upon which relief can be granted.

Second Defense

In answer to Paragraph I, these answering defendants are
an officer of the State of Arizona and a department of the State
of Arizona, and are not a corporate entity doing business in the
State of Arizona. Paragraph I of the complaint is denied.

In answer to Paragraph II, these defendants admit that
the plaintiff is the owner of some land being irrigated in Pima
County, located in the Santa Cruz Valley, south of the City of
Tucson, Arizona, but is without knowledge or information suffi-
cient to know the nature or extent of plaintiff's holdings, or

EXHIBIT A

1 the nature and extent of the lands being irrigated. These defend-
2 ants admit that the Sahuarita-Continental critical groundwater
3 area was designated by the State Land Department on October 14,
4 1954, pursuant to A.R.S. § 45-308; these answering defendants are
5 without sufficient knowledge, information or belief to form an
6 opinion as to the remainder of the allegations contained in
7 Paragraph II and therefore specifically deny each and every allega-
8 tion contained therein, demanding strict proof thereof.

9 Answering Paragraphs III and V of the Amended Complaint,
10 these defendants are without sufficient knowledge, information or
11 belief to form an opinion as to the truth of the allegations
12 therein contained and, therefore, deny each and every allegation.

13 In answer to Paragraph IV, these answering defendants
14 admit that the defendant Pima Mining Company has acquired well
15 sites on state land in the Sahuarita-Continental critical ground-
16 water area and have acquired a permit under commercial lease from
17 the State Land Department to pump water. Defendants are without
18 sufficient knowledge, information or belief as to the truth of
19 the remaining allegations of Paragraph IV and therefore deny each
20 and every other allegation contained therein.

21 In answer to Paragraph VI, these defendants admit that
22 the State of Arizona owns the water pumped from wells located on
23 state land which lies within the Sahuarita-Continental critical
24 groundwater area, and further contend that the state and/or its
25 lessees have the right to use such water on lands which lie within
26 the alluvial groundwater drainage basin which surrounds the
27 Sahuarita-Continental critical groundwater area, and further
28 admit that they claim the right to continue to use or claim such
29
30
31
32

1 rights in the future; these defendants specifically deny that such
2 use or proposed use is in violation of any property rights of the
3 plaintiff.

4 WHEREFORE, these answering defendants pray that the court:

5 1. Deny the plaintiff's prayer for relief;

6 2. Refuse to enter judgment enjoining the defendants
7 from using the water outside of the critical groundwater
8 area within which plaintiff's lands are situated;

9 3. That plaintiff's request that the defendants be
10 enjoined from pumping water from the wells now owned or
11 controlled by them in the Sahuarita-Continental ground-
12 water area be denied;

13 4. That the court enter judgment in favor of these
14 answering defendants and against the plaintiff in respect
15 to all of the issues raised in Count One; and
16

17 5. For such other and further relief as to the court
18 may seem just and proper in the premises.

19 COUNT TWO

20 First Defense

21 The plaintiff has failed to state a cause of action
22 against these answering defendants upon which relief can be
23 granted.
24

25 Second Defense

26 In answer to Paragraph I, Count Two, these defendants
27 admit each and every allegation contained therein, except defend-
28 ants are without knowledge or information sufficient to form an
29 opinion as to the number of acres owned by the plaintiff within
30 the Sahuarita-Continental critical groundwater area, and therefore
31

specifically deny the same.

1 Answering defendants admit each and every allegation con-
2 tained in Paragraph II except that defendants deny that they have
3 general control and supervision of the waters of the state,
4 both appropriable and ground water, and the distribution thereof,
5 and admit only that they have the control and supervision of waters
6 of the state as delegated to these answering defendants by statute.
7

8 In answer to Paragraphs III, V, VIII, IX and X of Count
9 Two, these defendants are without sufficient knowledge or informa-
10 tion to form an opinion as to the allegations contained therein
11 and therefore deny each and every allegation.
12

13 In answer to Paragraph IV, defendants admit that the supply
14 of water available to the land is not unlimited; deny any impli-
15 cation or allegation which indicates that the use of the water
16 by the defendants interferes with any rights to use the water
17 which may be owned by the plaintiffs; admits each and every other
18 allegation contained in Paragraph IV.
19

20 In answer to Paragraph VI, the defendants admit that
21 defendant Pima Mining Company has acquired a well site on state
22 land within the critical groundwater area and are properly pumping
23 groundwater therefrom, but are without sufficient knowledge,
24 information or belief to form an opinion as to whether or not
25 the water is being used within the critical groundwater area or
26 within the alluvial basin within which the critical groundwater
27 area lies, and is without sufficient knowledge, information or
28 belief to form an opinion as to each and every allegation referring
29 to the remaining defenses and therefore deny the same.
30

31 Answering Paragraph VII, this defendant admits that it
32

1 has granted rights of way Nos. 2232, 1297, 4352, 4275, 3858 and
2 4517 to the remaining defendants and admits that it has granted
3 a right of way currently appearing as No. 18-3039 to the defendant
4 Duval Sulphur & Potash Company, which right of way extends across
5 the South 660 feet of Secs. 8 and 9, T 18 S, R 13 E, for a water
6 line. Defendants specifically deny that any of the uses or trans-
7 portation is for illegal purposes.

8 WHEREFORE, defendants pray that the court in reference
9 to Count Two of Plaintiff's Amended Complaint, deny plaintiff's
10 prayer for relief; and that the court:
11

12 1. Declare the defendants' various uses of the
13 water legal;

14 2. Authorize the defendants to continue to use the
15 water in the manner in which it is currently being
16 administered.

17 COUNT THREE

18 First Defense

19 Plaintiff has failed to state a cause of action upon which
20 relief can be granted.
21

22 Second Defense

23 In answer to Paragraph I, Count Three, defendants incorpor-
24 ate herein by reference their answers to Paragraphs I, II and III
25 of Count One as set forth hereinabove.

26 Answering Paragraph II, Count Three, these defendants
27 admit that the remaining defendants have acquired well sites in
28 the Sahuarita-Continental groundwater area and are pumping water
29 from said wells, but these defendants are without knowledge,
30 information or belief sufficient to form an opinion concerning
31

1 the amount of such water being pumped and whether or not the water
2 is being used outside the critical groundwater area, or whether
3 such water is being used within the alluvial groundwater drainage
4 basin or outside thereof, and therefore specifically deny that
5 allegation and each and every other allegation contained in Para-
6 graph II, Count Three.

7 These defendants deny each and every allegation contained
8 in Paragraphs III, IV, V, VI and VII.

9 WHEREFORE, as to Count Three, defendants pray:

- 10 1. That plaintiff's prayer for relief be denied;
11 2. That judgment be entered in favor of these
12 answering defendants;
13 3. For such other relief as justice may require.

14 COUNT FOUR

15 First Defense

16 Plaintiff has failed to state a cause of action upon which
17 relief may be granted.

18 Second Defense

19 Defendants incorporate herein by reference their answers
20 to Paragraph I of Count Two of the Amended Complaint, in answer to
21 Paragraph I of this Count.

22 In answer to Paragraph II, Count Four, these defendants
23 admit each and every allegation contained therein except they
24 specifically deny that these defendants have the general super-
25 vision and control of the waters of the state, both appropriable
26 and groundwater and the distribution thereof, and admit only that
27 they have such general supervision and control of the waters of
28 the state as is delegated to these defendants by statute.

1 In answer to Paragraph 3, defendants incorporate herein by
2 reference their answers to Paragraphs III, IV and V of Count Two
3 of plaintiff's amended complaint.

4 Answering Paragraph IV, this answering defendant admits
5 each and every allegation contained therein except it is without
6 sufficient knowledge, information or belief to form an opinion
7 as to the allegations concerning transporting of the waters outside
8 the Sahuarita-Continental critical groundwater area and therefore
9 specifically denies the same.
10

11 In answer to Paragraph V these defendants admit that the
12 plaintiff has protested the pumping of groundwater in the Crit-
13 ical Groundwater Area and the transportation of the water so
14 pumped; admits that such protests were both informal and formal,
15 but denies that the pumping and transportation is illegal or
16 should be terminated.
17

18 Answering Paragraph VI, these defendants admit that
19 Commercial Lease No. 906 has been issued by these answering
20 defendants, but these defendants do not know who owns the lands
21 adjacent thereto and therefore specifically deny the allegations
22 relating to such lands.

23 In answer to Paragraph VII, defendants admit each and
24 every allegation contained therein except that they specifically
25 deny that Pima Mining Company has been or is being permitted any
26 unlawful use of water under said lease, and specifically deny that
27 the defendants' actions constitute an unlawful or wrongful exercise
28 of the powers of the defendants.
29

30 Defendants deny each and every allegation contained in
31 Paragraphs VIII and IX of Count Four of plaintiff's amended
32

complaint.

Defendants deny each and every allegation of the Amended Complaint not specifically admitted herein.

WHEREFORE, defendants pray:

1. That plaintiff's prayer for relief in Count Four be denied;

2. That Commercial Lease No. 906 issued by the defendants to Pima Mining Company be declared valid.

AFFIRMATIVE DEFENSE

The acts complained of by plaintiff which are attributed to these defendants have been pursued by the defendants for many years. The defendants in this action, other than these answering defendants, have expended substantial amounts of money in reliance upon their rights to use the groundwater in question, and for many years the plaintiffs have been aware of this use and have failed to assert any attempt to enjoin, prohibit or stop the remaining defendants' use of the water, but have allowed the remaining defendants to continue to expend substantial amounts of money in reliance upon the availability of the groundwater in question, and, therefore, these answering defendants allege and assert that plaintiff is estopped to claim that the groundwater used by the remaining defendants is illegal or should be enjoined.

CROSS CLAIM

I

The defendants Anaconda Company, American Smelting and Refining Company, Duval Corporation, Pima Mining Company and Duval Sierrita Corporation each have either right of way permits

1 obtained for the purposes of pipe lines for water, or a commercial-
2 lease permit for the purpose of pumping water from state land
3 lying within the Sahuarita-Continental critical groundwater area.
4 Defendants Andrew L. Bettwy as State Land Commissioner, and The
5 State Land Department affirmatively assert that any liability
6 arising out of the complaint filed herein is by virtue of the
7 right of way permits and commercial leases extended to the remain-
8 ing defendants, appearing in State Land Department records as
9 Permit Nos.

10
11 and Commercial Lease Nos.

12
13
14 that in each of these referenced rights of way permits or com-
15 mercial leases, the Grantee or Lessee agreed to:

16 . . . indemnify, hold and save Grantor (Lessor)
17 harmless against all loss, damage, liability,
18 expense, costs and charges incident to or result-
19 ing in any way from any injuries to person or
20 damage to property caused by or resulting from
21 the use, condition or occupation of the land.

22 Therefore, the Cross-Defendants herein are fully and wholly
23 liable for any liability which may accrue to the Cross-Complainants
24 by virtue of the complaint filed herein.

25 WHEREFORE, Cross-Complainants pray that if any judgment
26 for monetary damages be assessed against the Cross-Complainants
27 by virtue of the complaint filed in this action, that the court
28 enter judgment for the Cross-Complainants and against the Cross-
29 Defendants in a like amount; and for such other and further

30

31
32 -7-

(317)

1 relief as to the court may seem just and proper.

2 GARY K. NELSON
3 The Attorney General

4
5 PETER C. GULATTO
6 Assistant Attorney General
7 159 State Capitol
8 Phoenix, Arizona 85007
9 Attorneys for Defendants/Cross-
Complainants
10 Andrew L. Bettwy as State Land
11 Commissioner and The State Land
12 Department

13 Copy of the foregoing Answer and
14 Cross Complaint was mailed this
15 _____ day of July, 1973, to:

16 ✓ Snell & Wilmer
17 400 Security Building
18 Phoenix, Arizona 85004

19 ✓ Chandler, Tullar, Udall & Richmond
20 1110 Transamerica Building
21 Tucson, Arizona 85701

22 ✓ Calvin H. Udall
23 100 West Washington - Suite 1700
24 Phoenix, Arizona 85003

25 ✓ Evans, Kitchel & Jonckes
26 363 North First Ave.
27 Phoenix, Arizona 85003

28 ✓ Musick, Peeler & Garrett
29 One Wilshire Blvd.
30 Los Angeles, Calif. 90017

31 Court Administrator
32 Superior Court of Pima County
Tucson, Arizona 85701

LESHILL ~~signature~~
47-for City of Tucson

Peter C. Gulatto

